

Written testimony for inclusion in the hearing:
Connecticut Judiciary Committee public hearing on H.B. No 5390—An Act repealing statutory provisions that
impose liability on an individual for repayment of costs incurred when the individual was incarcerated

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Dear Members of the Judiciary Committee:

We are a team of three researchers leading the first empirical study comparing the imposition, recoupment, and consequences of “pay-to-stay” fees across states. Pay-to-stay refers to the practice of cities, counties, and states charging incarcerated individuals for the cost of their incarceration, with charges being assessed on a per-diem basis for room and board and specific costs for any services such as telephone calls, commissary, medical care, and education classes. Pay-to-stay is an extension of the monetary sanctions system of fines, fees and costs that shifts the fiscal burden of incarceration and criminal justice processing to those that traverse these systems. All fifty states have jurisdictions that charge jail and/or prison pay-to-stay fees, making pay-to-stay a common policy in the United States.

We have built the first comparative dataset of its kind analyzing prison pay-to-stay. We have shown that state lawmakers explicitly liken incarceration to a “hotel stay,” position incarcerated individuals as freeloading consumers of incarceration that cost the state money, and thus imagine pay-to-stay lawsuits as presenting incarcerated individuals with a “hotel bill” that if left unpaid, causes the state financial damages. These justifications for the continued use of pay-to-stay fees and civil recoupment strategies have serious consequences for reentry, as the vast majority of those charged and sued are unable to pay. These consequences include the seizure of assets from the partners and dependents of incarcerated individuals, the seizure of pensions and state benefits from incarcerated individuals that are often tied to the care of dependents, and prolonged attachment to the justice system in the form of extended incarceration and monitoring of compliance with civil judgments seeking outstanding debt.

For example, our data on Illinois includes 102 civil lawsuits brought by the state of Illinois from 1997 to 2015. We uncover a wealth of information about the ways in which the lawsuits operate, how the state justifies suing incarcerated defendants, and how the incarcerated defend themselves with few resources and often lack legal expertise or the ability to afford a private attorney specializing in civil law. Significantly, pay-to-stay policies cost the state more money in administrative costs than will ever be recouped from incarcerated and formerly incarcerated individuals, meaning pay-to-stay is not smart fiscal policy.

We also found that currently incarcerated individuals who were subject to the lawsuits suffered financial and material deprivation as a result of the lawsuits and the freezing of assets during the adjudication phase. While the Department of Corrections in every state are responsible for providing for the basic needs of incarcerated people, testimony in the lawsuits details the ways in which the incarcerated sustain themselves with food, clothing, and hygiene supplies due to the often-subpar resources provided by the state. Furthermore, incarcerated individuals contribute to the prison institution and economy with their underpaid labor -- providing services and doing jobs that would increase the costs to the Department of Corrections and the state without their labor. As further evidenced by the testimony of those subject to the lawsuits -- these incarcerated individuals not only give of their labor while in the institution, but they pay for goods in the commissary. Their families and loved ones send money and sustain them where the state falls short.

Pay-to-stay lawsuits hinders their ability to be self-sufficient, and tethers them perpetually to this incarceration debt, adding yet another hindrance on the path of reentry. These lawsuits are most often seeking payment for pay-to-stay bills that are well over \$100,000, at times reaching \$800,000, a debt that the average person in the United States could not afford, let alone a person that is incarcerated. These are not wealthy people being sued by the state. They are not millionaires. These assets are retirement accounts, labor union pension funds, inmate commissary accounts, personal injury settlements, inheritances from the loss of a mother or father -- someone who would have been a

support system during incarceration and after release. When they are released, people desperately need funds to cushion the extraordinary consequences that follow a felony criminal record and a long prison stay -- with impacts ranging from diminished employment prospects and lower wages to difficulties securing housing and health care. Often for these individuals, these are the only assets they have to their names. And given the extraordinary difficulties individuals with felony records face obtaining and maintaining employment and a living wage, these assets are often their sole lifeline to sustain them during their reentry process.

Notably, Illinois voted in 2019 to repeal the statute allowing prison pay-to-stay practices, making the state a model for criminal justice reform, with Illinois Attorney General Lisa Madigan quoted in the Chicago Tribune in 2015 in support of this reform movement: “the legislature should revisit whether this law is appropriate...these recoveries may raise roadblocks to former inmates trying to lead successful lives out of prison. As a result, the judgments that must be made in attempting to recover incarceration costs raise moral questions that legislators need to address.” Governor Pritzker signed the repeal in 2019, which went into effect in 2020, also noting its step toward recognizing the consequential impact of prison pay-to-stay policies on reentry and further tethering people to the criminal justice system indefinitely.

It is paramount that other states such as Connecticut follow their example and reassess the purpose, practicality, and consequences of pay-to-stay and civil recoupment strategies such as lawsuits. Our research finds that the lawsuits represent harm against those subject to the lawsuits and punishment beyond time served, resulting in a permanent debt to the state and thus continued tethering to the criminal and civil legal systems. As a leader in criminal justice reform in other areas, but noticeably lagging in terms of pay-to-stay policies, Connecticut now has a unique opportunity to join other like-minded states who are rethinking these practices and repealing similar statutes.

Research Summarized:

- Fernandes, April D., Brittany Friedman, and Gabriela Kirk. 2022. “The ‘Damaged’ State vs. the ‘Willful’ Nonpayer: Constructing Damage, Harm, and Willfulness through Pay-to-Stay Lawsuits.” *RSF: The Russell Sage Foundation Journal of the Social Sciences*. 8(1): 82-105. <https://doi.org/10.7758/RSF.2022.8.1.04>.
- Friedman, Brittany, April D. Fernandes, and Gabriela Kirk. 2021. “‘Like if you Get a Hotel Bill’: Consumer Logic, Pay-to-Stay and the Production of Incarceration as a Public Commodity.” *Sociological Forum*. 36(3):735-757. <https://doi.org/10.1111/socf.12718>.
- Friedman, Brittany. 2021. “Unveiling the Necrocapitalist Dimensions of the Shadow Carceral State: On Pay-to-Stay to Recoup the Cost of Incarceration.” *Journal of Contemporary Criminal Justice* 37(1): 66-87. <https://doi.org/10.1177/1043986220965040>.
- Kirk, Gabriela, April D. Fernandes, and Brittany Friedman. 2020. “Who Pays for the Welfare State? Austerity Politics and the Origin of Pay-to-Stay Fees as Revenue Generation.” *Sociological Perspectives* 63(6):921-938. <https://doi.org/10.1177/0731121420967037>.